



In the Matter of:

SHARYN ERICKSON,

ARB CASE NO. 04-086

COMPLAINANT,

ALJ CASE NOS. 99-CAA-2

v.

01-CAA-8

01-CAA-13

02-CAA-3

**U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 4, ATLANTA, GA.,**

02-CAA-18

03-CAA-11

03-CAA-19

RESPONDENT.

04-CAA-1

DATE: January 14, 2005

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:

Sharyn Erickson, pro se, Lawrenceville, Georgia

ORDER DISMISSING APPEAL

On April 27, 2004, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule in this matter, which involves the Complainant's petition for review of Administrative Law Judge Clement J. Kennington's March 19, 2004 post-judgment Order Denying Complainant's Motion to Reopen Record. The briefing schedule allowed the Complainant to file an initial brief no later than May 27, the Respondent to file a reply brief no later than June 28, and the Complainant to file a rebuttal brief no later than July 12, 2004. On May 11, 2004, the Complainant, representing herself, moved for a stay of these proceedings before the Board. Specifically, the Complainant requested that the Board stay the proceeding until questions concerning the qualifications of the attorney who had initially represented her in filing this appeal were resolved, unless the Complainant engaged a different

attorney to represent her in this matter before that time.¹ By order issued July 14, 2004, the Board granted the Complainant's stay request.

On January 5, 2005, the Complainant, again representing herself, filed a Motion to Withdraw Appeal to Reopen Records, indicating that she wishes to withdraw this appeal. The Complainant states that she wishes to ensure that the stay imposed on this appeal does not delay the disposition of the other appeals that she has filed that are pending before the Board. The other appeals pending before the ARB are as follows: *Erickson v. United States Env'tl. Prot. Agency, Reg. 4 and EPA Ofc. of Inspector Gen.*, ARB Nos. 03-002, -003, -004, ALJ Nos. 99-CAA-2, 01-CAA-8, 01-CAA-13, 02-CAA-3, 02-CAA-18 [*Erickson I*], and *Erickson v. United States Env'tl. Prot. Agency*, ARB Nos. 04-024, -025, ALJ Nos. 03-CAA-11, 03-CAA-19, 04-CAA-1 [*Erickson II*], in addition to the appeal from a denial of attorney's fees, *Erickson v. United States Env'tl. Prot. Agency*, ARB No. 03-064, ALJ Nos. 99-CAA-02, 01-CAA-008, -013, 02-CAA-003, -018. The case records in *Erickson I* and *Erickson II* were the subject of the Complainant's motion to reopen the record that Judge Kennington denied in his March 19, 2004 Order Denying Complainant's Motion to Reopen the Record, which is the subject of this appeal. As the Complainant indicates in the dismissal motion, the appeals in *Erickson I* and *Erickson II*, and the attorney's fee appeal, are fully briefed.²

¹ Edward A. Slavin, Jr., represented the Complainant when she filed this appeal on March 25, 2004. The questions concerning Mr. Slavin's qualifications that prompted the Complainant to request a stay in this appeal arose following the attorney's disqualification from practice before the Department of Labor Office of Administrative Law Judges by Associate Chief Administrative Law Judge Thomas M. Burke. See *In the Matter of the Qualifications of Edward A. Slavin, Jr., Counsel for Complainant In re Daniel Somerson, Complainant v. Eagle Express Lines Inc., Respondent*, No. 2004-STA-12; ALJ No. 2004-MIS-2 (Mar. 31, 2004). An appeal of that disqualification order is currently pending before the ARB. Since the Board issued the order granting the Complainant's stay request on July 14, 2004, Mr. Slavin was also suspended from the practice of law by his licensing jurisdiction, the Tennessee Supreme Court, on August 27, 2004. *Board of Prof. Resp. of the Sup. Ct. of Tenn. v. Slavin*, 145 S.W.3d 538 (Tenn. 2004). The Tennessee court suspended Mr. Slavin for a period of two years, with permission to apply for reinstatement after one year. On October 20, 2004, this Board imposed reciprocal discipline based on the Tennessee court suspension. *In re the qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172 (ARB Oct. 20, 2004). Based on the Tennessee Supreme Court order, the Office of Administrative Law Judges also issued an order imposing reciprocal discipline. *In the matter of the qualifications of Edward A. Slavin, Jr.*, ALJ No. 2004-MIS-5 (ALJ Sept. 28, 2004). In view of these disciplinary actions that have been imposed since the Board stayed these proceedings on July 14, 2004, it is clear that Mr. Slavin may not represent the Complainant in this appeal, regardless of whether the Board upholds the disqualification order that Judge Burke issued on March 31, 2004.

² Since Mr. Slavin's filings on behalf of the Complainant in the other appeals pending before the ARB pre-date the October 20 suspension order, the Board will follow its practice and, relying on the briefs Mr. Slavin filed to represent the Complainant's position in those appeals, will proceed

Continued . . .

The Board does not require a petitioner to demonstrate cause for requesting to withdraw an appeal. *See Gene's Food Serv.*, ARB Nos. 01-060, -087, (ARB Aug. 30, 2001). The Board therefore would ordinarily grant such request without examining any reason that may be cited by the petitioner. However, in this matter in which the Complainant has taken responsibility for representing herself in the circumstances described in n.1, we believe the reason that the Complainant gives for withdrawing this appeal warrants the following discussion.

To clarify the status of the other appeals filed by the Complainant that are pending before the ARB, we note that the Board's July 14, 2004 stay order applied only to this appeal in ARB No. 04-086 and not to the other appeals that the Complainant had filed. We also point out that, although there is a relationship between the outcome of the Board's disposition of the *Erickson I* and *Erickson II* appeals and this appeal regarding the Complainant's motion to reopen the records in those cases, the Board's consideration of those appeals is not impeded by a stay of the proceedings in this appeal No. 04-086. Therefore, although we dismiss this appeal, we do so with leave for the Complainant to seek reinstatement of the appeal. *Cf. Anderson v. DeKalb Plating Co.*, ARB No. 98-158, ALJ No. 97-CER-001 (ARB July 27, 1999) (relying on Fed. R. Civ. P. 41(a) to reject respondent's argument that administrative law judge properly dismissed whistleblower's voluntarily withdrawn complaint with prejudice); *Cable v. Ariz. Public Serv. Co.*, No. 90-ERA-15 (Sec'y Nov. 13, 1992) (upholding administrative law judge's application of Fed. R. Civ. P. 41(a) and adopting his recommendation for dismissal of whistleblower complaint without prejudice). *See generally Gutierrez v. Regents of the Univ. of Cal.*, ARB No. 99-116, ALJ No. 98-ERA-19, slip op. at 2-3 (ARB Nov. 8, 1999) (Ord. Accepting Pet. for Rev. and Estab. Briefing Sched.) (applying *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532 (1970) to waive compliance with regulatory filing deadline). If the Complainant chooses to reinstate this appeal, she must advise the Board in writing within 30 days of the date of this order.

to decide those appeals on the merits. *See, e.g., Howick v. Campbell-Ewald Co.*, ARB Nos. 03-156, 04-065, ALJ Nos. 03-STA-06, 04-STA-07, slip op. at 2 n.1 (ARB Nov. 30, 2004).

CONCLUSION AND ORDER

This appeal is accordingly **DISMISSED**. If the Complainant chooses to reinstate this appeal, she must file a written request with the Board within **30** days of the date of this order.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge